

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RAGHAVENDER MALLANNAGARI,)	No. 09 C 1352
)	
Plaintiff,)	Chicago, Illinois
)	February 16, 2010
-vs-)	1:30 o'clock p.m.
)	
GSS AMERICA, INC., et at.)	
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WAYNE R. ANDERSEN

APPEARANCES:

For the Plaintiff: THE LAW OFFICE OF J. BRYAN WOOD
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Suite 610
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BY: MR. JAMES BRYAN WOOD
and
PETERSON BERK & CROSS
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P.O. Box 2700
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BY: MR. MICHAEL F. BROWN

For Defendants GSS	LAW OFFICES OF ANTHONY PINELLI
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Ltd, Akula and	Chicago Illinois 60604
Associate Systems LLC:	BY: MR. ANTHONY PINELLI
	and
For Defendants GSS	WILLIAMS MONTGOMERY & JOHN, LTD.
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	BY: MR. JAMES P. FIEWEGER

1 APPEARANCES: (Continued)

2 For Defendants BLEGEN & GARVEY
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8 For Defendants LAW OFFICES OF ELLEN R. DOMPH
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23 Court Reporter:

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ROSEMARY SCARPELLI
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1 THE COURT: You are probably wondering why we are
2 having oral argument. When I heard that Ellen was involved,
3 I thought, what can we do to get her into this court? So --

4 MS. DOMPH: I am not saying anything. I am
5 standing on my pleadings.

6 THE COURT: That is a challenge. We will see.

7 Please be seated. Are we expecting anybody else?

8 MR. PINELLI: I don't think so.

9 THE COURT: Okay. So why don't we go around and
10 state your name for the record and who you represent.

11 MR. WOOD: Sure. Bryan Wood for the plaintiff,
12 Mr. Mallannagari.

13 MR. BROWN: Michael Brown for the plaintiff.

14 MR. FIEWEGER: Jim Fieweger on behalf of defendant
15 GSS America and GSS Infotech.

16 MR. PINELLI: Good afternoon, Judge, Anthony
17 Pinelli, P-I-N-E-L-L-I, for GSS America, Inc., GSS Infotech,
18 Mr. Dheeraj Akula and Associate Systems LLC.

19 MR. BLEGEN: Patrick Blegen for Bhargav Marepally
20 and Ramish Yerrasmsetti.

21 MR. BRAYMAN: Paul Brayman on behalf of Mr. Patel,
22 Mr. Adlakonda and Mr. Capalby.

23 THE COURT: Would you want to announce -- we don't
24 want to make her a liar right off the bat, so since she said
25 she would say nothing, do you want to tell the Court that

1 Miss Domphe is here and who she represents. Okay.

2 MS. DOMPH: Ellen Domphe for Tilak Chalasani.

3 THE COURT: Thank you.

4 Even though it is the defendant's motion, perhaps
5 one of you can take the floor and give me the background on
6 this lawsuit because I want to make sure I understand what
7 you are -- what the basis for what you are doing is. And
8 then I would like to get a summary of why the defendants
9 believe that much of the lawsuit should not remain.

10 MR. WOOD: Sure. Your Honor, would you like me to
11 come to the podium from here?

12 THE COURT: Sure, sure. Actually, I had a law
13 clerk, now a long time ago, who kept correcting me for two
14 years. He said that is a lectern, this is a podium. So when
15 you mount to get your gold medal, you are mounting the
16 podium. When you are going to speak, it is the lectern.

17 So fire away.

18 MR. WOOD: I will take the lectern. If it is okay,
19 your Honor, we also have a couple of handouts that will,
20 hopefully, be useful to the Court.

21 THE COURT: Okay.

22 MR. WOOD: The only -- there is only one change to
23 what has already been filed, but we just thought it would be
24 helpful.

25 THE COURT: Are they identical? I mean those are

1 multiple copies of one handout?

2 MR. WOOD: They are four copies of each handout,
3 correct.

4 THE COURT: Okay. Why don't you give one to me.
5 And then Kate O'Loughlin is, of course, with Judge Lindberg,
6 so she has that other case filed against you. And then Katie
7 Cook is working with me. There is an employment
8 discrimination.

9 MR. PINELLI: Judge, that case is settled and
10 dismissed.

11 THE COURT: Oh, it was?

12 MR. PINELLI: Yes.

13 THE COURT: You know, it is a good idea if the
14 Judge is the among the first 50 to find out.

15 MR. PINELLI: Judge, we advised Judge Lindberg.

16 THE COURT: Or, in the case of Judge Lindberg, his
17 law clerk.

18 MR. PINELLI: Judge Lindberg entered the order
19 dismissing the case.

20 THE COURT: Are you leaving?

21 CLERK O'LOUGHLIN: I can.

22 THE COURT: Oh, no one told you.

23 Yeah, sometimes we don't -- you know, our law
24 clerks are the last -- you are welcome to stay. It is up to
25 you. So if she stays -- she is really smart, so she might

1 help me.

2 MR. WOOD: Thank you, your Honor. Plaintiff is a
3 foreign worker here from India. He was recruited, promised
4 wages, had his Visa sponsored by GSS America and --

5 THE COURT: He got an H-1 visa?

6 MR. WOOD: H-1B visa, correct.

7 THE COURT: And back in the olden days when I
8 actually helped a couple people get visas, my recollection is
9 is that you had to have a specific job to get that visa.

10 MR. WOOD: That's --

11 THE COURT: With a specific employer?

12 MR. WOOD: That's correct.

13 THE COURT: Right?

14 So it is not like you can say, I am a super whiz
15 violinist that some symphony in America would want, the
16 Chicago Symphony has to say to the State Department, we can't
17 find anybody like this violinist, so we would like you to
18 give him an H-1 visa, is that correct?

19 MR. WOOD: That's correct.

20 THE COURT: And so what you are saying here is that
21 GSS stepped up to the plate and said for your client, we
22 can't find his skills replicated in the American market, we
23 need him for the job we have?

24 MR. WOOD: That's correct, that is what they said,
25 your Honor.

1 THE COURT: All right. Please proceed.

2 MR. WOOD: As it turned out, that wasn't -- that
3 wasn't true. There was not work available for him as
4 represented on the LCA application. He showed up to GSS
5 America's offices from January to October of 2008 but never
6 received any paychecks or wages during that period of time.
7 It sounds as though your Honor is familiar with the H-1B
8 process, so I won't go over that in too much detail.

9 In addition to the H-1B Visa process, there is a
10 trafficking enforced labor statute which is designed to
11 prevent the -- obtaining work through the abuse of legal
12 process, legal processes like the H-1B visa process.

13 Here we allege that all of the defendants were
14 involved in violations of the tracking -- trafficking and
15 forced labor statutes. And in the Exhibit B that we
16 provided, specific counts as to each defendant.

17 The problems with the abuse of the process, as your
18 Honor is --

19 THE COURT: Do you have magnifying glasses too?

20 MR. WOOD: I do not, but I can provide a bigger
21 copy, if that will assist the Court. We can -- we are happy
22 to blow it up.

23 THE COURT: Okay.

24 MR. WOOD: In addition to that violation, there is
25 also a violation of the trafficking claims for benefiting

1 from the participation in a venture where you know foreign
2 work fraud or violations of abuse of the H-1B process are
3 going on. That is a specific statutory provision of 18
4 U.S.C. 2, Section 1593A.

5 THE COURT: Do those statutes give individuals a
6 private cause of action?

7 MR. WOOD: They do. Section 1593A specifically
8 identifies the individuals who can be sued and includes --
9 for a civil action and includes in those individuals -- I
10 don't have the exact framework, the statutory language in
11 front of me -- but includes individuals who participate in a
12 -- who receive benefit from a venture, from participation in
13 a venture of where they know or should know violations of
14 forced trafficking and labor laws are going on.

15 That, from plaintiff's perspective, clearly applies
16 to all of the named defendants in this matter because we
17 specifically allege that each of them knew that forced
18 trafficking in labor was -- was taking place.

19 I am going to ask Mr. Brown to go over a summary of
20 the process or the enterprise, basically the fraudulent
21 scheme. But what is important to note is that even if
22 plaintiffs cannot prove their -- even if plaintiff cannot
23 prove his RICO claim, this forced trafficking and labor
24 statute provides an individual basis for liability for the
25 predicate acts that are identified in Exhibit B. So even if

1 the Court finds that plaintiff somehow has not sufficiently
2 pled RICO requirements, the -- there is a -- there is a basis
3 for the forced labor and trafficking claims to go forward.

4 Additionally, plaintiff alleges that there was,
5 obviously, an unpaid wages. We allege there were control of
6 certain defendants that -- controlled by certain individual
7 defendants, not all. But the chart lays that out.

8 We also allege that there were specific
9 misrepresentations made to plaintiff on behalf of GSS and GSS
10 America which provide the basis of the fraud claims there.
11 There were also knowing misrepresentations on which plaintiff
12 relied, which we identify in our pleadings, which give rise
13 to the basis for the fraud claims against individual
14 defendants beyond GSS and GSS America.

15 But generally speaking, that provides an overview
16 of the claims on which plaintiff --

17 THE COURT: Now, just so I understand your client's
18 position, when did he come to the United States?

19 MR. WOOD: Mike.

20 MR. BROWN: His first day of work was January 8th,
21 2008.

22 THE COURT: Okay.

23 MR. BROWN: But he was in the United States prior
24 to that time, I believe, on an old BT, a student-type status.

25 MR. WOOD: Student visa.

1 THE COURT: Wait. It is a she?

2 MR. WOOD: He.

3 MR. BROWN: He.

4 THE COURT: So he stayed here. He didn't come here
5 as a result of this process?

6 MR. BROWN: He came here as a result of a different
7 visa, I believe. I know for a fact that his --

8 THE COURT: So probably he was here on a student
9 visa.

10 MR. BROWN: Yes, sir.

11 THE COURT: Got himself really well-educated,
12 wanted to stay here and work, and apparently got what I will
13 call the H-1 Visa to, what you are saying is in his mind, get
14 the job that GSS had for him, right?

15 MR. WOOD: Correct.

16 THE COURT: Okay. Where is he now?

17 MR. WOOD: He is here working for another employer.
18 After some difficulty he was able to transfer his visa to a
19 different employer.

20 THE COURT: So ultimately he found an employer and
21 he is operating under that same H-1 Visa?

22 MR. WOOD: With a different --

23 THE COURT: As far as we know.

24 MR. BROWN: Yes.

25 MR. WOOD: With a different sponsor, right.

1 THE COURT: Right. And for what period of time was
2 he unemployed?

3 MR. WOOD: He was employed, but not paid by GSS,
4 from January 2008 to October 2008.

5 MR. BROWN: Yes.

6 MR. WOOD: I think he retained employment
7 elsewhere.

8 MR. BROWN: Effective November 1st, 2008.

9 THE COURT: He has represented -- you could talk,
10 that is fine.

11 MR. BROWN: Oh.

12 THE COURT: He has represented in his complaint
13 that he thought he would have a job for how much money again?

14 MR. BROWN: \$60,000.00.

15 THE COURT: A year?

16 MR. BROWN: Yes.

17 THE COURT: So why haven't you just sued for the
18 wages he lost and let it go at that?

19 MR. BROWN: There are core wage claims that are
20 based on H-1B regulations. Those core wage claims are
21 restated on that application documentation, as far as I
22 remember -- I had done this a long time ago. But on that
23 H-1B labor condition application document that goes to the
24 Department of Labor, that restates these core wage
25 obligations. That form also states if you make a false

1 attestation on this form -- it is right by the signature --
2 then you will have violated 18 U.S.C. 1546, which is an
3 immigration document fraud statute. That language on the LCA
4 form itself also says that this sort of false attestation and
5 potential violation of 1546 could subject to civil as well as
6 criminal liability.

7 Now, 1546 is --

8 THE COURT: So wait. I want to -- maybe you are
9 getting there. But my question is --

10 MR. BROWN: Oh.

11 THE COURT: It would seem to me that what you have
12 alleged is a contract claim where the defendant did not
13 perform under the contract. They -- he said, I would pay you
14 \$60,000.00 a year. You showed up for work. He didn't have
15 the job. And it wasn't until about ten months later or about
16 \$50,000.00 of unpaid wages later that he got another job. So
17 why aren't you just suing for those wages?

18 MR. BROWN: Well, I agree any underpaid wage claim
19 could involve contract claim under the court's statutory
20 claims, which the wage claim initially -- or a couple wage
21 claims. However, that -- you know, where I was almost at, as
22 far as that 1546, that statute reference, as far as false
23 attestations on the LCA form, is an explicit predicate act
24 under RICO.

25 So the plaintiff's position is this form, this

1 application form, says here is the penalty, federal
2 immigration statute violated. RICO law specifically
3 incorporates that statute as a predicate act which subjects a
4 violating party to treble damages, assuming other RICO
5 requirements are met.

6 MR. WOOD: I think to supplement Mr. Brown's
7 answer, the answer goes beyond that in -- to the extent that
8 there are other claims that -- for which plaintiff can pursue
9 based on the same conduct that -- defendants' same legal
10 conduct that offer him alternative damages. We, as his
11 attorneys -- I have an obligation to inform him of those
12 claims and pursue them, if they are viable, to maximize his
13 recovery.

14 Putting that point aside, there is also the problem
15 that he saw, when he was there, that this is -- this is a
16 company that routinely abuses this process, that he was not
17 the only person who was brought here under the false -- or
18 who accepted employment under the false promise of being paid
19 wages. There are -- there were many others like him. And
20 based on the information he and we have been able to gather,
21 this is -- this is a routine occurrence at that company and
22 there are laws designed to prevent that type of thing from
23 occurring. Congress has deemed it important. And we, on his
24 behalf, and he as a private attorney general, want to enforce
25 those laws, not only for himself, but also to make sure that

1 this type of thing doesn't happen.

2 THE COURT: Okay. So I am going to turn it over to
3 the defendants in a minute. But I gather from looking at
4 your complaint that you claim that there is lots of people in
5 this position, in his position, although none of them go
6 named. So -- so there is no specificity as to what their
7 names might be. They are not running into court and
8 complaining. And we do know that if everything you say about
9 the immigration laws is correct, which it seems to me it is,
10 there is an array of regulatory agencies that have the
11 responsibility to make sure people don't do what you are
12 talking about. Right?

13 MR. WOOD: Yes. The Department of Labor
14 specifically has been involved in an investigation of GSS.
15 Mr. Mallannagari is also working with -- or has filed a
16 Department of Labor charge as well. He has heard, to my
17 knowledge, nothing in response to that Department of Labor
18 charge. Part of the problem and part of the scheme that he
19 alleges is efforts by defendants to conceal and destroy
20 information that the Department of Labor could have relied on
21 in reaching a -- in reaching a finding.

22 I think that is part of the basis for the other
23 matter before Judge Lindberg, was the knowledge relating to
24 -- to that and is included as a part of Mr. Mallannagari's
25 complaints.

1 The -- yes, there are those alternative enforcement
2 mechanisms. I think in the -- as I am sure your Honor is
3 aware as a governmental employee, in the current budget
4 situation there is not always resources, even if there is a
5 viable alternative.

6 The --

7 THE COURT: Okay. Let's hear why the defendant --
8 let's hear from the defendants.

9 MR. BROWN: Your Honor, could I have one point that
10 I think is important?

11 THE COURT: Sure.

12 MR. BROWN: You mentioned that no other workers
13 were named, but in fact we did name another worker named
14 Apoorva Siddaramaiah. He was also, per his allegation and
15 per -- I should say the complaint's allegation -- underpaid.
16 He in his case filed a Department of Labor complaint in
17 January of 2009. And there was a separate Department of
18 Labor complaint. While we did not know the identity of that
19 -- that third employee for whom the complaint was filed,
20 Department of Labor complaint allowed the claimants, at least
21 for a time, to remain anonymous. So -- as well as the
22 plaintiff's own observations of the workers in the office.

23 But you are correct, there is not a laundry list of
24 names, but there are other persons or claims identified.

25 THE COURT: I was just a little surprised that if

1 your guy was showing up for 30 weeks trying to find a job,
2 making calls, and there were lots of other people that --
3 between those calls, which were unfruitful, that he wasn't
4 saying hello to his neighbors and having lunch with them and
5 getting to know their situation. So that is --

6 MR. BROWN: They are scared to come. I am sorry.

7 MR. WOOD: Right.

8 MR. BROWN: They are scared.

9 MR. WOOD: Respectfully, your Honor, we are aware
10 of names of other people who Mr. Mallanngari can confirm. He
11 asked us not to put their names in the complaint because of
12 fears of retaliation and reprisal against them as they try to
13 transition from the situation Mr. Mallanngari found himself
14 to a different situation, as well as the overall problem of
15 the individual's ability to be in this country being tied to
16 the sponsor of the H-1B visa.

17 That said, he has not authorized us to pursue the
18 case as a class or a collective action. It is an option we
19 continue discussing with him. At that point we would,
20 obviously, have to make an amendment and provide the names
21 that your Honor says are lacking in the complaint. But we
22 don't want you to believe there aren't individuals out there.

23 I think in Judge Lindberg's there was a pleading
24 that identified an e-mail that included a list of names of
25 individuals for whom checks were being withheld. So it is a

1 part of the public record at least that there are lots of
2 other individuals who are being affected by this.

3 THE COURT: Okay. Thanks. Who wants to urge me to
4 dismiss the case and why?

5 MR. FIEWEGER: Your Honor, we haven't really agreed
6 on any division of the arguments or what have you, and I am
7 not inclined to step on anyone's toes or argue on behalf of
8 anybody else. But on behalf of GSS America and GSS America
9 Infotech, just for ease of reference, I refer to GSS America
10 as just GSS.

11 THE COURT: Okay.

12 MR. FIEWEGER: GSS America Infotech as GSS
13 Infotech.

14 GSS America is the company that offered Mr.
15 Mallanngari a position of employment, hired him, retained
16 him, brought him to to the Chicago area, housed him. GSS
17 Infotech is a company based in India with offices only in
18 India. And when we look at the complaint, I think it is
19 important to keep those distinctions in mind, not just for
20 GSS and GSS Infotech but for all of these defendants because
21 what has happened here, your Honor, really is they filed a
22 complaint alleging RICO.

23 And you asked them earlier, why didn't you just
24 file a wage claim action? And they danced around a little
25 bit, but at one point Mr. Wood said, well, there is treble

1 damages under RICO. This is why they filed a RICO action,
2 your Honor. This isn't a RICO case.

3 They filed their first -- their first complaint.
4 The complaint got dismissed because they couldn't plead --
5 they couldn't allege an entity. All they did was charge GSS
6 as being the association that was carrying out the alleged
7 RICO activity. So they were -- okay. They learned now we
8 have got to broaden it beyond -- it has got to be somebody
9 besides GSS. So what did they do? They added GSS, GSS
10 Infotech and a bunch of -- kind of what I think of as
11 periphery defendants who are primarily either employees of
12 GSS or some sorts of consultants that were hired by GSS to
13 help them in their business in various respects.

14 When you look at just GSS and its employees, you
15 are dealing with the same problem as what they had in the
16 first complaint. It is just GSS, and that is not a RICO
17 enterprise. So what they did was they added on these
18 accountants, consultants, you know, IT people, people who
19 allegedly participated in this scheme but really didn't have
20 any role, even according to their allegations, had no role in
21 managing or directing the scheme.

22 And as a result they are -- they are legally --
23 they should be dismissed. They are -- they are nonentities
24 for RICO purposes. They are not -- if they are not managing
25 or directing, they can't be a RICO defendant. They are not a

1 part of the association. So once you throw out these
2 parties, these kind of hangers on that aren't managing or
3 directing, you are back to GSS America and its employees.

4 Now, they add -- they make these claims against GSS
5 Infotech about how it supposedly directed this conduct and
6 knew about it and benefited from it. Judge, I mean this is
7 their amended complaint. I don't know how many pages, how
8 many paragraphs. You read this, you won't know who a single
9 officer, director or employee of GSS Infotech is, with the
10 exception of one individual. I think it is in
11 Paragraph 76 -- 76A -- they say a gentleman named Mr. Raju
12 who resides in India and is an employee of Defendant GSS and
13 that Defendant GSS India e-mailed plaintiff and indicated he
14 had reviewed plaintiff's resumes and provided plaintiff
15 suggestions to get a work project for a third-party employer.
16 That is it. That is the only specific communication or
17 individual regarding GSS Infotech that is in this complaint.

18 And now they are supposed to be dragged across the
19 ocean to answer a RICO complaint because they knew about
20 something, they directed something, they benefited from
21 something. You know, if we are going to drag them in, let's
22 hear who it is, who did what, when, how. You know, and they
23 have had an opportunity to do this and it is not here, your
24 Honor.

25 And what is here is a bunch of mumbo jumbo about

1 other individuals that were working with GSS that had nothing
2 to do with RICO. So, your Honor, the RICO claim is just --
3 it is fanciful. To be honest with you, I -- I agree with
4 you, this is an action about claim for past wages. Mr.
5 Mallanngari claims that he showed up and reported for work
6 and wasn't --

7 THE COURT: If we -- if we were to grant your
8 motions to dismiss, what would be left of the lawsuit?

9 MR. FIEWEGER: I think the claims against -- I
10 think that the wage loss claims against GSS America.

11 THE COURT: What is your position on that?

12 MR. FIEWEGER: I think that the -- they can state a
13 claim against GSS.

14 THE COURT: Is it -- do you think that -- does your
15 client owe him the money, do you think?

16 MR. FIEWEGER: I don't know. To be honest with
17 you, I don't know. My client -- there is going to be serious
18 factual issues in this case, your Honor. They stood up there
19 and said he reported to work for ten months. I will be
20 shocked if that is what the record shows. I mean we will see
21 what happens, but talking to my clients --

22 THE COURT: Did he show up to work for ten minutes?

23 MR. FIEWEGER: For ten months.

24 THE COURT: Ten months, rather.

25 MR. WOOD: Yes. Not every day, as every person

1 takes a sick day on occasions, you know.

2 MR. FIEWEGER: Well, I mean we will try and track
3 down --

4 THE COURT: I am just --

5 MR. FIEWEGER: We will try and track these issues
6 down.

7 THE COURT: I just trying to imagine how we want
8 you to evidence the shock if you find out. Well, maybe your
9 hair turn white or jump up and down or something.

10 Okay. So what elements do you believe they have to
11 show to maintain a RICO action that they have failed to
12 allege?

13 MR. FIEWEGER: I feel I think that they have failed
14 to allege an association. I think they have failed to allege
15 an adequate time span. I mean they get to six years, or
16 whatever, by referring back to all of these hundreds of other
17 H-1B applicants for whom, your Honor, you pointed out, nobody
18 is complaining. We haven't heard from the Department of
19 Labor about any of those. None -- none of them are coming
20 forward to join this lawsuit.

21 I mean we represented that they are concerned about
22 retaliation against other potential plaintiffs. Your Honor,
23 unfortunately, with the -- with the economic circumstances
24 GSS has been hit hard, and I believe many of the consultants
25 who were working with them at the time Mr. Mallanngari was

1 aren't working there anymore. They don't have -- they don't
2 have the business. So this alleged concern about retaliation
3 from their current employer, my suspicion is for many of them
4 it doesn't exist because the company has had to downsize.

5 THE COURT: What is GSS' business?

6 MR. FIEWEGER: They do computer consulting. They
7 go into companies and design software applications for them.
8 They are third-party computer --

9 THE COURT: You want me to dismiss the RICO claims.
10 Any other claims?

11 MR. FIEWEGER: I think everything should be
12 dismissed other than the wage loss claims against GSS.

13 THE COURT: And those, you acknowledge, are federal
14 claims?

15 MR. FIEWEGER: The Fair Labor Standards Act. I
16 think the other two are duplicative.

17 THE COURT: Did you answer that?

18 MR. FIEWEGER: No.

19 MR. PINELLI: Judge, I am sorry, the original
20 complaint I moved to dismiss the RICO and the slave trade. I
21 answered on behalf of GSS on the Fair Labor Standards claim.
22 We denied liability. We believe there is a tribal issue as
23 to whether or not anything is owed. We did answer that. We
24 got the amended complaint. I haven't answered that, but I
25 assume I am going to if you allow that claim to stand.

1 MR. FIEWEGER: On the motions on wage loss claims,
2 we have moved to dismiss -- what is it -- four and five as to
3 duplicative of three.

4 MR. PINELLI: We moved to dismiss the Illinois wage
5 claims under the Illinois Wage Payment and Collection Act,
6 not the Fair Labor Standards Act claims. They are not going
7 to get paid twice. It is harder to get attorney's fees under
8 the Illinois Wage Payment.

9 MR. FIEWEGER: Mr. Pinelli is doing them a favor.

10 MR. PINELLI: That was our position.

11 And if I might just add one other thing from the
12 original briefing. Judge, I know we have talked about some
13 things that I am not sure are in the complaint. In the
14 complaint the entire allegation with respect to that second
15 slave trade count is Paragraphs 19 and 20. Plaintiff made
16 himself to start work on an H-1B visa on or about
17 January 8th, 2008. When plaintiff reported to work, he
18 learned that the programmer analyst position defendants
19 referenced in the letter, an offer letter, did not exist.
20 Defendants did not have a job for him."

21 There is no allegation in this case that anybody
22 traveled to the United States. I looked at every case I
23 could find -- and there aren't many under that peonage and
24 slave trade -- but there are convictions under criminal law
25 in the Southern District of New York where people had

1 domestic folks at their home who had a visa -- they took
2 their papers -- who could not leave. They weren't paid.
3 They could not prove they were legally in America. This was
4 considered criminal conduct. There is -- nothing even
5 approaching that has been alleged. So, respectfully, I do
6 think we have a wage dispute here, but RICO and slave trade I
7 believe are quite a reach beyond this complaint.

8 THE COURT: And do you -- and what you are also
9 contending is is that the -- the other named defendants,
10 whatever -- they have nothing to do with any of this and that
11 that is a frivolous thing to name them?

12 MR. PINELLI: Judge, they did not have any
13 direction or control over GSS. My two clients, Mr. Akula and
14 ASL, were consultants brought in to help organize documents
15 during the Department of Labor audit that went on for a
16 couple of months. They as outside individuals -- under the
17 test like in the United States versus Warneke, they are
18 outside individuals. They are not involved in the direct
19 operation or control of the enterprise itself. If there is
20 -- there was no bribery allegation, which is the only way for
21 an outsider to perhaps be involved.

22 So for those individuals, I believe, respectfully,
23 there just isn't enough to hold them on RICO. On the slave
24 trade, they are in there, but there are no fact allegations
25 about them.

1 THE COURT: Is that true -- not to speak for all of
2 you, but is that true of the other defendants as well?

3 MS. DOMPH: It is all --

4 THE COURT: They are all really independent
5 consultants, they are not officers, directors of GSS?

6 MR. PINELLI: A couple of individuals are, Judge,
7 and -- but, I would like Mr. Blegen, Mr. Brayman --

8 THE COURT: Okay.

9 MS. DOMPH: Just to Mr. Tilak Chalasani, he was a
10 consultant just like Mr. Akula.

11 THE COURT: That is your client?

12 MS. DOMPH: Yes, my client. So he was a consultant
13 during eight weeks of an audit. And what is interesting
14 about his situation is he worked for CES USA. They are a
15 named defendant and they have been dismissed out. And he was
16 hired through them, is my understanding -- hired through
17 them.

18 THE COURT: Hired through?

19 MS. DOMPH: CES, who has been dismissed out, I am
20 assuming because -- I am not informed why, but I am assuming
21 because they couldn't state a claim against them. And there
22 has been no allegations that he worked outside of the scope
23 of that employment for CES. CES has been dismissed out. So
24 I would adopt Mr. Pinelli's argument regarding Mr. Akula and
25 direct your attention to that issue.

1 THE COURT: Mr. Brayman, what about your client?

2 MR. BRAYMAN: Judge, two of them are directors of
3 GSS and one was inhouse counsel. You can see the summaries
4 kind of in the amended complaint. And those three people,
5 Miss Patel was an employee, as was Mr. Adlakonda. So is
6 Mr. Capalby. He was the -- the inhouse counsel. And all
7 they do is in their complaint just summarize their positions,
8 you know, with a company, without making any allegations what
9 they ever did to --

10 THE COURT: Merit the status of being a defendant?

11 MR. BRAYMAN: Yes, right. It is just throwing in
12 employees, you know, as individual defendants with really no
13 factual allegation as to why they should be held responsible.

14 THE COURT: Okay. Patrick.

15 MR. BLEGEN: Judge --

16 THE COURT: Thank you.

17 MR. BLEGEN: Similarly my clients, Mr. Marepally
18 and Mr. Yerrasmsetti -- you don't want to hear what Mr.
19 Fieweger said. What he said is right. The complaint doesn't
20 make allegations.

21 THE COURT: What is their relationship to the --

22 MR. BLEGEN: CEO, Marepally and Yerrasmsetti COO.

23 As far as RICO, they allege what I call in the
24 pleadings a nebulous RICO enterprise which is this loose
25 group of people. I think, as Mr. Fieweger said, the RICO has

1 to go out.

2 Illinois Minimum Wage Payment Act and FSLA are
3 concerned for individual people like Marepally and
4 Yerrasmsetti. And this also covers some of Mr. Brayman's
5 clients, Capalby and Patel and Adlakonda. They haven't
6 sufficiently alleged they meet the requirements of being
7 employer. They sued GSS as the employer that -- that is who
8 I assume they are interested getting their money back from.

9 But these individual people, they haven't alleged
10 enough to -- so that they are either -- for purposes of the
11 Illinois Wage Payment Act that they knowingly permitted the
12 guy to go underpaid. And they haven't alleged enough under
13 the -- Illinois Minimum Wage Law or of FLSA. They haven't
14 sufficiently alleged that they had supervisor authority --
15 supervisory authority over the plaintiff and had partial
16 responsibility for the alleged violation.

17 When you make those kind of claims in your
18 pleading -- they cited today a paragraph of the complaint,
19 Paragraph 84, which in my view is so -- I can't even -- I
20 honestly don't even understand what they are saying in the
21 paragraph. It pretty much boils down to saying that had GSS
22 directed itself not to pay the plaintiff, but it also says
23 that those things were done under the knowingly directive,
24 and then they pretty much throw everybody up against the
25 wall.

1 I don't think that is enough, even under the
2 relatively loose pleading requirements, to hold individual
3 people like Yerrasmsetti, Marepally, Patel, Capalby --
4 especially the lawyer, had nothing to do with the operations
5 of even GSS and nothing to do with payment. They don't have
6 enough to hold them individually liable for the failure to
7 pay the alleged failure to pay the wages.

8 THE COURT: Do you want to make any response to any
9 of that?

10 MR. BROWN: We do.

11 MR. WOOD: We do, your Honor, we would like to
12 respond to a few points.

13 THE COURT: Okay.

14 MR. WOOD: First of all, with respect to the RICO
15 claims --

16 THE COURT: And you are welcome to stay there.
17 No, you could sit down.

18 MR. BROWN: Oh. I am confused about GSS Infotech
19 who we call GSS India. They are based in India. In the
20 complaint -- they are referenced many times in the amended
21 complaint. And this Exhibit B chart lists all sorts of
22 paragraphs and -- in the amended complaint, but they are
23 referenced both in terms of factual allegations, also in
24 terms of legal violations and specific predicate acts. So
25 the reference to there being one reference to GSS Infotech I

1 don't understand.

2 MR. FIEWEGER: Your Honor, it was my client. Can I
3 just clarify what I meant by that?

4 THE COURT: Sure.

5 MR. FIEWEGER: There is all kinds of references GSS
6 Infotech knew about this, GSS Infotech directed that, but
7 they are -- who -- who at GSS Infotech did anything? When?
8 When did they do it? How did they do it? Did they write a
9 letter? Did somebody tell the COO? You can say GSS Infotech
10 did this, did that, did the other thing, but there are no
11 specifics at all.

12 It is like I was -- it occurred to me the other day
13 I don't -- re-reading this amended complaint, I don't know
14 anybody who was at GSS Infotech, so I read through -- the
15 only person ever even mentioned from GSS Infotech is this one
16 employee who looked at a resume. Everything is directed
17 that with no specificity.

18 THE COURT: Okay.

19 MR. BROWN: Your Honor, the definition of a RICO
20 enterprise includes explicitly a person or an entity or a
21 corporation. So that is basically an argument that the
22 statutory definition is incorrect somehow. But it is an
23 entity. It is perfectly fine to specify an organization just
24 like individuals. We have a chart here of all sorts of
25 individuals who are listed in detail. Their names, both in

1 terms of persons and entities, organizational entities,
2 parent, subsidiary, individual actors, defendants,
3 nondefendants and we telex actually what they -- it is
4 summarized in here exactly what they did, but we state
5 exactly which paragraphs within the amended complaint specify
6 the facts as to exactly what they did and when they did it
7 and how they did it and their names and the places they were
8 at and who they are acting on behalf of and who they were
9 directing and who were they were being directed by. It is
10 all in --

11 The main thing I am hearing from the defense in
12 terms of argument, let's not read the complaint, 60-page
13 document. And it wasn't fun drafting. But in terms of an
14 enterprise, the recent Supreme Court case of Boyle defined
15 enterprise more in terms of its functionality than splitting
16 apart each individual actor and what their particular roles
17 -- their roles are important -- but even more important what
18 general purpose they serve in acting and doing what they did.

19 Here it is easy. The purpose is is to run a body
20 shop, which is a temp service, which is illegal under H1-B
21 law. Under H1-B law you can run a temp service. You can
22 send a person from Oracle to IBM from project to project.
23 When an employer does that and parties do that under -- for
24 RICO purposes, that person has to be paid in between those
25 projects for bench time. When GSS America and the named

1 defendants, who are Defendant Patel, Defendant Capalby,
2 Defendant GSS India, all -- Defendant Marepally, Defendant
3 Yerrasmsetti, these are all people specifically identified
4 to have knowledge of a falsified LCA document that was
5 submitted to the United States Government saying we are going
6 to pay this guy \$60,000.00 a year, and they knew they
7 weren't.

8 Your Honor, we could also comment on the
9 relationship between GSS India -- or what we call GSS India
10 -- GSS Infotech and what defendants call GSS. We did not
11 specifically allege facts from which the Court could decide
12 to pierce the corporate veil because we believe there is an
13 independent basis for liability for each of the individuals
14 as well as the two defendants GSS India and GSS.

15 Miss Pinto did allege facts which form a basis to
16 pierce the corporate veil. And Judge Lindberg in a motion to
17 dismiss, which I have a copy of the decision -- I imagine his
18 clerk could provide for you as well -- determined those facts
19 as pled, if true, would provide a basis for piercing the
20 corporate veil.

21 There is clearly a close relationship between the
22 two organizations and a sharing of many functions. And I
23 understand and apologize for the fact that we are well beyond
24 the pleadings. But I feel as though we -- we shouldn't place
25 form over substance with respect to what we know to be true

1 versus what may or may not have been exactly listed in the
2 complaint. Given the opportunity, we can plead facts that
3 would support piercing the corporate veil based on what we
4 now know from Miss Pinto and information that she has
5 provided. We chose not to do that because we believe that
6 each entity is independently responsible, that we have
7 alleged facts which are like that.

8 Finally, with respect to Mr. Chalasani, I -- Miss
9 Domph must have forgotten or I must have forgotten to provide
10 a copy of the statement, sworn statement, from her client
11 provided by -- to me by the former counsel for CES that
12 clearly demonstrates that Mr. Chalasani never informed CES of
13 anything that he was doing for GSS. That was the basis for
14 the dismissal of that defendant. It certainly doesn't
15 provide a basis for the dismissal of Mr. Chalasani based on
16 his own statement, which, again, we have and can provide.

17 Again that is going outside the pleadings, which we
18 are not entitled to do at this point, I understand, but I
19 don't want your Honor to get the impression from defense
20 counsel's arguments that just because facts do not happen to
21 appear in the complaint, that that doesn't mean that they are
22 not true or that we now know that they are true.

23 Finally, Mr. Pinelli mentioned that the only thing
24 that can provide a basis for liability under the forced
25 trafficking laws was withholding documentation of the -- that

1 authorized an individual to be here in the country. We now
2 know through the sworn statement from a former defendant that
3 was taking place with respect to some individuals. It was
4 not taking place with respect to the plaintiff, but it was
5 taking place with respect to other workers here on H-1B
6 visas.

7 THE COURT: What was taking place?

8 MR. WOOD: That they were withholding
9 authorizations that -- they were basically withholding the
10 visa form work that showed that the individuals were in the
11 country, that they were -- that the visa has been approved,
12 that they had been granted visa status, that the company was
13 withholding that documentation and not sending it out to the
14 individual.

15 From our perspective as what happened with respect
16 to Mr. Mallanngari, the same thing effectively was occurring
17 here. He was not being provided pay stubs. He needed those
18 pay stubs to try to transfer his employment, which he -- once
19 he realized there wasn't a position, that he knew he needed
20 to go elsewhere to find income. So not having the pay stubs
21 made it far, far, far more difficult for him to be able to
22 transfer a visa and find another sponsor. So from my
23 perspective, there is little difference between actually
24 keeping the visa paperwork that says you are authorized to be
25 here or keeping the pay stubs that an employee like Mr.

1 Mallanngari can use to transfer.

2 Some of the arguments that defendants raise as to
3 deficiencies in the pleadings we can't dispute. What we do
4 know is that we -- or what we do believe is that based on the
5 standards that the Court must apply at this stage, we have
6 alleged sufficient facts to move forward on the claims on
7 which we are continuing to try to move forward on. We
8 voluntarily dismissed claims when we thought there was no
9 basis the wage claims -- the fact that -- the fact that --
10 the fact that the defendants characterized the state wage law
11 claims as redundant ignores a broad variety of federal
12 issues.

13 And, you know, I believe in the Illinois
14 Legislature's right to make another law that would also hold
15 defendants accountable as well as the FLSA law with respect
16 to certain individual defendants -- that the individual
17 defendants on which we are pursuing those claims, we believe
18 we have alleged facts and explained facts on which those
19 individual defendants should be held individually
20 responsible.

21 THE COURT: Let me just take a brief break to
22 consult with all the brains here. And then if I have
23 additional questions, I will let you know when I come back.
24 Okay?

25 Thanks for being here.

1 (Brief pause.)

2 THE COURT: Okay. Please be seated.

3 Okay. Here is what we think we should do: "We"
4 meaning you: I think that I should -- I should grant you
5 leave to file another amended complaint. In that complaint I
6 think you should restrict yourself to what relief your client
7 wants for himself and what facts he has of his own knowledge
8 to support that relief.

9 Now, I know that the whole area of fraud and the
10 Federal Rules gets to be a bit of a Catch 22 because
11 sometimes you don't know what you don't know, but it seems to
12 me that rather than name lots of people who might have
13 undefined ways of being involved as co-defendants -- and I am
14 not a Rule 11 sanction guy, so very rarely do I -- I grant
15 Rule 11 sanctions, but I do believe if somebody has been
16 named as party in a lawsuit, has to hire lawyers to get out
17 of that lawsuit, then unless the person making the
18 allegations against them personally has a factual basis for
19 making those allegations, at the very least they should get
20 their attorney's fees paid to get out of it.

21 So my suggestion is that you file a second amended
22 complaint in which you allege what your client want -- wants,
23 what -- only what he personally knows rather than general
24 allegations about Judge Lindberg's lawsuit or things that you
25 have heard the Department of Labor is doing, et cetera, et

1 cetera.

2 And, obviously, during the course of discovery on
3 that -- because we would be at issue on that -- additional
4 facts may come out that would give you a substantial basis
5 for having a RICO claim or adding other individual defendants
6 who might have been really controlling GSS indirectly or
7 directly. Then that would be appropriate then. But given
8 pleading standards of the Federal Rules, I don't think that
9 your client has alleged enough firsthand knowledge here to
10 move forward without me dismissing a number of those claims.

11 I also -- on the duplicative claim of the state
12 action, I think you are perfectly entitled to allege a State
13 action as well and the time -- you know, actually I have had
14 a bunch of lawsuits like that. No one is going to double
15 collect. There is likely to be two modestly different
16 theories of collection. And it really makes jury
17 instructions exciting, if it ever went that far, to try to
18 avoid double collection. But I have been in that position
19 before. I have stumbled and made a lot of mistakes, but I
20 haven't made that mistake on a wage claim sort of matter
21 again. So I think that that is a valid thing to do.

22 So it is up to you. If you want me to decide this
23 motion to dismiss as it sits there, I am likely to do it, but
24 I am also likely to not have seen information in this
25 complaint which I think adds a number of these defendants on

1 good faith basis. Obviously, we are here because if GSS was
2 in the process of systematically doing this to lots of people
3 -- and I noticed they are not flooding the courtroom -- one
4 suspects that some of them got American jobs and they are
5 very happy and so maybe they weren't injured. Maybe they
6 were actually helped in some nice, human way, if extra-legal
7 way. But if you -- that I wanted to clarify that.

8 But if -- if you want to purr -- to rest on what
9 you have, I will decide the motion to dismiss. But if I
10 don't find adequate factual basis for every defendant named,
11 I am likely to award that defendant compensation for having
12 to show up and having to defend itself in the absence of
13 specific knowledge on your client's part. If you want to
14 start with something narrower and in the course of discovery
15 were saying, I know they weren't just a consultant, they were
16 running GSS and telling everyone to do that, and they had a
17 basis for doing it, then that would be a basis for bringing
18 someone in as manager of some kind of conspiracy.

19 What would you like to do? Do you want to take a
20 final fresh run at this and if facts are unveiled during
21 discovery, you can amend, or do you want to give it a shot
22 where you are now, knowing that I think this is pretty mushy
23 under the federal standards?

24 MR. WOOD: I guess I am a little confused as to our
25 options, and then would also appreciate some period of time

1 to consult with the client about it because it is his
2 lawsuit, not mine.

3 THE COURT: Your options are to have me decide the
4 motions that are pending now, which look like pretty good
5 motions to me. But it is -- you know, you have got all these
6 pages and all these parties and the chart -- even you
7 required a chart, so -- well, that is fine. Life isn't
8 simple, and I am happy to work my way through it. But based
9 on the review of it I have made and my law clerk has made and
10 the discussions we have had and what you have said today, it
11 doesn't look to me like you have a RICO conspiracy alleged
12 based on knowledge that your client has. You are -- if I am
13 wrong, be happy -- that the -- you are assuming that because
14 there is smoke in a number of other directions, that
15 something is there. And maybe it is. But I didn't write the
16 Federal Rules.

17 And with respect to the individual defendants, if
18 their relationship is not in any kind of controlling way and
19 they are not independent, both, I don't see how they get
20 involved in this lawsuit either as parties -- they might be
21 witnesses and maybe some day you will get enough information
22 to make them a party -- but I don't think they should be
23 dragged into what is essentially a 40 to \$50,000.00 wage
24 claim.

25 Also, I was under the impression that your -- your

1 client had been lured from a village in India here, and now I
2 know he was here on a student visa. He wanted to stay. And
3 because other people might have had papers taken away, I
4 heard nothing today that would have stopped him from saying,
5 this isn't what I thought it was, I am going home. And he,
6 apparently, decided not to do that. So I find that a little
7 troubling too.

8 So that is what I -- so you can stand on what you
9 have and I will rule. You might expose yourself to some
10 costs if cases get dismissed. Or you can par it down to what
11 he knows and what you really think you are entitled to. And
12 if during the course of the disputes that defense counsel
13 guarantee us will transpire, other people with other facts
14 want to step forward or facts emerge which make other parties
15 implicate other parties, then you could amend your complaint
16 to do that. I think those are your two basic choices.

17 MR. WOOD: Just to make sure I understand, when you
18 say "facts he knows," do you mean he and his attorneys as
19 agents or do you mean what is personally --

20 THE COURT: He knows. Whoever is signing that
21 complaint has got to know it.

22 MR. WOOD: Right.

23 THE COURT: So it is not we think there is somebody
24 else out there that filed a complaint with the Department of
25 Labor and we think they are worried about the same thing, we

1 think a former employee who said something and is settled
2 knows this. You shouldn't sign unless you know it to be
3 true, unless you have some factual basis for it.

4 MR. WOOD: Right.

5 THE COURT: There is also option No. 3 which
6 lawyers forget, which is settle it. Make a reasonable
7 demand. And the defendant shouldn't worry about your demand.
8 You should make -- if you -- there is a certain price for
9 which you would like to get rid of this lawsuit, offer it to
10 the plaintiff and see whether or not they take it. You know,
11 I -- I think too often defendants are put off by plaintiff's
12 demands. But if a plaintiff has nothing, putting a little
13 bit of money on the table clarifies that. And certainly if
14 he were to prevail on any of his theories, his lawyers are
15 going to have a daunting amount of work. So you guys,
16 hopefully, are going to get paid by the lawyer hour. But
17 plaintiff's counsel, I am guessing, isn't sending out monthly
18 statements. But there is going to be a huge amount of work,
19 win, lose or draw.

20 So your main goal to represent your client is get
21 what money you think he should have had for that nine-month
22 period. If I -- if he were sitting here, I would say, look,
23 why don't you offer X number of dollars and see if -- why
24 don't you demand it and see if they will pay it and get this
25 all over with.

1 But -- so do you want to let us know? When would
2 you like to report back?

3 MR. WOOD: We could report back as to which route
4 we would like to pursue in a week or two.

5 THE COURT: Right. I would vote for -- today is
6 the 15th. I would vote for -- how about February 25th?

7 MR. WOOD: Okay.

8 THE COURT: That is at 9:00 o'clock. I will set it
9 on the 9:00 o'clock call. But since we are all e-mail
10 friends, if you don't want to have -- and not all defendants
11 need to be here. If we don't hear in advance, if one of you
12 could come, I won't be offended if the others don't come.
13 But you are always welcome. But if you want to e-mail what
14 you would like to do to us, then we can avoid everyone having
15 to come over here. And I could respond by e-mail and we
16 could move on with the lawsuit.

17 And -- but if you want me to decide it, that is
18 fine. I mean if you feel good about the complaint and your
19 defense against the motion to dismiss, that is fine. I will
20 do my job. And I don't mean that sarcastically. It is a lot
21 of work. And I will go into it with an open mind and open
22 heart.

23 MR. WOOD: If the plaintiff would choose to amend
24 the complaint, approximately what time would we be given to
25 amend?

1 THE COURT: Well, you tell me.

2 MR. WOOD: Okay.

3 THE COURT: You tell me what time you want. Say I
4 would like until X to file an amended complaint.

5 MR. WOOD: Okay.

6 THE COURT: You know, so I am not -- and I -- you
7 know, we wouldn't be here if I weren't troubled by this
8 apparent way of doing business. You know, if -- if what you
9 have alleged is true, it is somewhat troubling. So here we
10 are.

11 Thanks.

12 MR. WOOD: Thank you for your time, your Honor.

13 MR. FIEWEGER: Thank you, Judge.

14 THE COURT: Thank you all for being here.

15 (Which were all the proceedings heard.)

16 CERTIFICATE

17 I certify that the foregoing is a correct transcript
18 from the record of proceedings in the above-entitled matter.

19

20 s/Rosemary Scarpelli/

Date: July 16, 2010

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